


<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/743,738	NUSSKERN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ernesto Garcia	3679	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to an RCE filed on 7/19/04 and the telephone interview of 9/3/04.
2. ☒ The allowed claim(s) is/are 32-34, 36, 53-58 and 62.
3. ☒ The drawings filed on 06 August 2003 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                       |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.  |

## EXAMINER'S AMENDMENT

### *Allowable Subject Matter*

Claim 53 is generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 54, 56 and 57, respectively directed to the species of Figures 14, 20, and 32 are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mrs. Catherine M. Voorhees on 9/3/04.

The application has been amended as follows:

claim 53, line 2 – added a comma after “elements”,

lines 9-10 - deleted “comprises a clamping sleeve, into which the at least  
one constructive element is inserted in the axial direction,” and

line 12 – deleted “in the tensioning element”;

claim 54, line 2 – replaced the second occurrence of “the” with --a--,

claim 55, line 11 – deleted “in the tensioning element”,

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line 13 – replaced the second occurrence of “the” with --a--,

line 14 – added a comma after “state” twice, and replaced the second occurrence of “the” with --a--, and

line 15 – replaced “the” with --a--;

claim 56, line 2 – replaced the second occurrence of “the” with --a--;

claim 62, line 2 – deleted “to be connected”, and

line 4 – deleted “to be connected that”;

The following is an examiner’s statement of reasons for allowance:

regarding claim 53, the prior art of record does not disclose or suggest a connecting element, in combination with at least one constructive element, comprising an elastically deformable tensioning element comprising a clamping sleeve comprising a spring material consisting of a superelastic shape memory alloy being a stress-induced martensitic state. Morse, 3,039,800, teaches a connecting element, in combination with at least one constructive element, but Morse is silent to the type of material used and whether the material is in the stress-induced martensitic state;

regarding claims 32-34, 36, 54, 56-58 and 62, these claims directly or indirectly depend from claim 53;

regarding claim 55, the prior art of record does not disclose or suggest a connecting element comprising an elastically deformable tensioning element comprising a clamping sleeve being in a stress-induced martensitic state having an oval cross

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section in a relaxed state; Julien, 6,530,564, teaches an element in Figure 22; however, the element is a supporting structure or element instead of a connecting element.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 703-308-8606. The examiner can normally be reached from 9:30-6:00. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



E.G.

September 3, 2004



DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600